

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER ALLEN CAIN,

No. 2:21-cv-1327-EFB P

Plaintiff,

v.

K. BROWN, et al.,

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Defendants.

Plaintiff is a federal prisoner proceeding without counsel in an action brought for alleged violations of his civil rights. After a dismissal by the court, plaintiff has filed an amended complaint, which the court must screen. ECF Nos. 11 & 13. Plaintiff also requests the appointment of counsel. ECF No. 9.

Request for Appointment of Counsel

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues

1 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,  
2 the court finds there are no exceptional circumstances in this case.

3 Screening Order

4 Congress mandates that district courts engage in a preliminary screening of cases in which  
5 prisoners seek redress from a governmental entity or officer or employee of a governmental  
6 entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the  
7 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to  
8 state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who  
9 is immune from such relief.” *Id.* § 1915A(b).

10 The court analyzed plaintiff’s original complaint pursuant to § 1915A as follows:

11 Plaintiff alleges that between October 13, 2020 and November 5, 2020,  
12 defendants Thompson, Brown, Boulware, Shigeyasu, and Alatary denied him  
13 access to the court. ECF No. 1 at 9. More specifically, plaintiff claims that they  
14 denied him paper, a pen, and envelopes “during the critical stages of [his] appeal  
15 process.” *Id.* at 8. They allegedly told plaintiff he could receive mail but could  
not send mail out. *Id.* According to the complaint, defendants’ actions “caused  
adverse decision to be ruled against [plaintiff] by the United States District Court  
of Eastern Washington on [plaintiff’s] post-conviction appeal.” *Id.*

16 Plaintiff’s claim that defendants’ conduct caused the district court in  
17 Washington to issue an adverse ruling is not supported by that court’s criminal  
18 docket in *United States v. Cain*, No. 2:16-cv-0176-RMP-1 (E.D. Wash.), of which  
19 this court takes judicial notice.<sup>1</sup> On March 6, 2019, the court issued a resentencing  
20 judgment. *Id.*, at ECF No. 190. On the same day, plaintiff filed a notice of appeal.  
21 *Id.*, ECF No. 192. The U.S. Court of Appeals for the Ninth Circuit affirmed the  
22 decision of the district court and issued its mandate on April 27, 2020. ECF Nos.  
23 201, 202. On May 7, 2020, a federal defender filed a notice of appearance on  
24 behalf of plaintiff. ECF No. 203. Nothing further has been filed by either plaintiff  
25 or the court. Thus, the court has not issued any adverse ruling to plaintiff as a  
26 result of defendants’ alleged conduct in October and November of 2020.

27 If plaintiff wishes to assert a First Amendment claim based on denial of  
28 access to the courts, he must plead specific facts showing that defendants actually  
injured his litigation efforts. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996);  
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32 <sup>1</sup> A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,  
33 803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1                   *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002). In an abundance of  
2 caution, the court will afford plaintiff the opportunity to file an amended  
3 complaint.

4 ECF No. 5 at 3.

5                   In the amended complaint, plaintiff clarifies that his injury for purposes of an access to the  
6 courts claim is that he was unable to respond to an October 26, 2020 letter from an attorney  
7 discussing plaintiff's post-conviction options and the possibility of representing plaintiff. ECF  
8 No. 10 at 3. Plaintiff also alleges that he was unable to file an administrative grievance. *Id.*

9                   The allegations in the amended complaint do not cure the deficiencies identified in the  
10 court's prior screening order. Plaintiff's inability to respond to a letter from an attorney, who  
11 plaintiff had not retained, is not an "actual injury" for purposes of an access to courts claim. An  
12 actual injury arises where a defendant's conduct hinders plaintiff's efforts to bring, or causes him  
13 to lose, an actionable claim challenging his criminal sentence or conditions of confinement. *See*  
14 *Lewis v. Casey*, 518 U.S. 343, 351 (1996); *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002).  
15 Upon further review of plaintiff's criminal proceedings in Washington, it appears that there was  
16 an adverse ruling against plaintiff.<sup>2</sup> That ruling, however, was not caused by plaintiff's inability  
17 to respond to the October 26, 2020 letter from an attorney. *See United States v. Cain*, No. 2:16-  
18 cv-0069-RMP-1 (Apr. 5, 2021, E.D. Wash.) (denying motion on the merits). Further, the  
19 improper handling of administrative appeals does not violate due process, as there are no  
20 constitutional requirements regarding how a grievance system is operated. *See Ramirez v. Galaza*,  
21 334 F.3d 850, 860 (9th Cir. 2003); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

22                   For these reasons, the amended complaint must be dismissed for failure to state a claim  
23 upon which relief could be granted.

24                   The court has afforded plaintiff a chance to amend his complaint, yet he is unable to state  
25 a claim upon which relief could be granted. Consequently, it declines to offer a further

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26                   <sup>2</sup> The court takes judicial notice of a second criminal docket in the United States District  
27 Court of Washington, *United States v. Cain*, No. 2:16-cv-0069-RMP-1 (E.D. Wash.), as it appears  
28 that the decision issued by the Ninth Circuit covered two cases in which plaintiff was a criminal  
defendant.

1 opportunity to amend. *See Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)  
2 (futility of amendment and previous opportunities to amend are factors to assess in weighing the  
3 propriety of granting leave to amend).

4 Conclusion

5 Accordingly, it is ORDERED that:

6 1. Plaintiff's request for the appoint of counsel (ECF No. 9) is DENIED; and  
7 2. The Clerk of Court shall randomly assign a United States District Judge to this case.

8 Further, it is RECOMMENDED that plaintiff's amended complaint (ECF No. 10) be  
9 DISMISSED without leave to amend for failure to state a cognizable claim and the Clerk be  
10 directed to close the case.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
16 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
17 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: January 19, 2022.

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20 EDMUND F. BRENNAN  
21 UNITED STATES MAGISTRATE JUDGE  
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